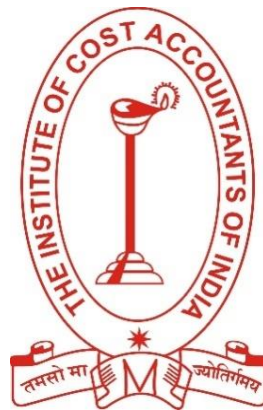


Exposure Draft

Guidance Note

On

**Treatment of Costs Relating to Corporate
Social Responsibility (CSR) Activities**



The Institute of Cost Accountants of India
(Set up by an Act of Parliament)
New Delhi

**Exposure Draft for Guidance Note on Treatment of Cost on Corporate Social
Responsibility(CSR) Activities, Last Date of Comments/ Suggestions- 18th May 2016**

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Exposure Draft for Guidance Note on Treatment of Cost on Corporate Social Responsibility(CSR) Activities, Last Date of Comments/ Suggestions- 18th May 2016

Introduction

1. Corporate Social Responsibility (CSR) is a management concept. It refers to strategies and activities through which companies integrate social and environmental concerns in their business. CSR leads to sustainable development of the economy.
2. The concept of socially responsible organizations is not new to India. Traditionally, in India, big corporate houses have adopted CSR and others have helped building the society through philanthropic activity. Post Companies Act 2013, the practice of CSR in India still remains within the philanthropic space, but has include, in addition to institutional building (educational, research and cultural), community development and environment protection through various projects and programmes.

Objectives

3. The objective of this Guidance Note is to provide guidance on recognition, measurement, presentation and disclosure of costs relating to CSR activities, as defined in the Companies Act 2013.

Scope

4. What constitutes CSR activities is specified in Schedule VII to the Companies Act, 2013. Ministry of Corporate Affairs (MCA) has issued clarifications vide their general circular no. 21/2014 dated June 6, 2014 and amended Schedule VII vide Notification No. GSR 741(E) dated October 24, 2014. MCA vide Notification No. GSR 129(E) dated February 2, 2014 has notified the Companies (Corporate Social Responsibility Policy) Rules, 2014, that were twice amended vide notification no. GSR 644(E) dated September 12, 2014 and GSR 43(E) dated January 19, 2015.
5. Accordingly, this Guidance Note does not deal with identification of activities that constitute CSR activities but only provides guidance on recognition, measurement, presentation and disclosure of CSR expenses.

Definitions

6. For the purpose of this Guidance Note, the definitions except at sl. nos. (g) to (i) are reproduced from the Companies Act, 2013, and the Companies (Corporate Social Responsibility Policy) Rules, 2014 and in the event of any change in the Act or the Rules made thereunder, these definitions shall stand automatically revised/modified to that extent. All other definitions are adapted from the Cost Auditing Standards issued by the Institute.

(a) "Act" means the Companies Act, 2013 (18 of 2013)

(b) "Any financial year" referred under sub-section (1) of section 135 of the Act

read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'. (Clarification vide MCA General Circular No. 21/2014 dated 18.6.2014)

- (c) "Average Net Profit" is the amount as calculated in accordance with the provisions of Section 198 of the Companies Act, 2013.
- (d) "Corporate Social Responsibility (CSR)" means and includes but is not limited to:-
 - (i) Projects or programs relating to activities specified in Schedule VII to the Act, or
 - (ii) Projects or programs relating to activities undertaken by the board of directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.
- (e) "CSR Committee" means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act;
- (f) "CSR Policy" relates to the activities to be undertaken by the company as specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company;
- (g) "Cost audit" is an independent examination of cost statements, cost records and other related information of an entity when such an examination is conducted with a view to express an opinion thereon.
- (h) "Cost Auditor" means an auditor appointed to conduct an audit of cost records and shall be a cost accountant within the meaning of The Cost and Works Accountants Act 1959. "Cost Accountant" is a cost accountant as defined in clause (b) of sub-section (1) of section 2 of The Cost and Works Accountants Act, 1959 (23 of 1959) and who holds a valid certificate of practice under subsection (1) of section 6 and who is deemed to be in practice under subsection (2) of section 2 of that Act and includes a firm of cost accountants.
- (i) "Cost Audit Report" means the report duly signed by the cost auditor on an independent examination of the cost statements, cost records and other related information of an entity expressing his opinion thereon, including any qualifications, observations, or suggestions etc.

- (j) “Financial Year”, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

- (k) “Net Profit” means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely:

- (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
- (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

Provided that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, (1 of 1956) shall not be required to be re-calculated in accordance with the provisions of the Act:

Provided, further that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381 read with section 198 of the Act.

- (l) “Net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;
- (m) “Turnover” means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or

both, by the company during a financial year;

- (n) "Institute" means The Institute of Cost Accountants of India constituted under section 2(1)(f) of the Cost and Works Accountant Act, 1959 (23 of 1959);
- (o) "Management" refers to the person(s) with executive responsibility for the conduct of the entity's operations. For some entities in some jurisdictions, management includes some or all of those charged with governance.

Companies Act, 2013

7. Section 135 of the Companies Act, 2013 (the Act), requires the Board of Directors of every company having a net worth of Rupees 500 crore or more, or turnover of Rupees 1,000 crore or more or a net profit of Rupees 5 crore or more, during any financial year, to ensure that the company spends in every financial year at least 2% of the average net profits of the company made during the three immediately preceding financial years on Corporate Social Responsibility (CSR) in pursuance of its policy in this regard. The Act requires such companies to constitute a Corporate Social Responsibility Committee which shall formulate and recommend to the Board a Corporate Social Responsibility Policy which shall indicate the CSR activities to be undertaken by the company as specified in Schedule VII to the Act.

The requirement of the Companies Act 2013 that companies with a net profit of 5 crore INR or more shall spend on CSR activities, it is likely that section 135 of the Companies Act shall be applicable to many small and medium sized companies. This will pose a fresh set of challenges to a sector that is increasingly being asked by its stakeholders to comply with environmental and social standards, while remaining competitive. Thus, SMEs will have to quickly learn to be compliant with these diverse set of requirements.

Companies (Corporate Social Responsibility Policy) Rules, 2014

8. Rule 4 requires that the CSR activities that shall be undertaken by the companies to comply with provisions of Section 135 of the Act shall exclude activities undertaken in pursuance of its 'normal course of businesses. The Rules also specify that CSR projects or programmes or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with the requirements of the Act. Such programmes or projects or activities, that are carried out as a pre-condition for setting up a business, or as part of a contractual obligation undertaken by the company or in accordance with any other Act, or as a part of the requirement in this regard by the relevant authorities cannot be considered as a CSR activity within the meaning of the Act. Similarly, the requirements under relevant regulations or otherwise prescribed by the concerned regulators as a necessary part of running of the business, would be considered to be

the activities undertaken in the 'normal course of business' of the company and, therefore, would not be considered CSR activities.

9. Rule 8 states that CSR expenditure shall include all expenditure including contribution to corpus, for projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

Income Tax Act, 1961

10. Under the existing provisions of the Income-tax Act, expenditure incurred wholly and exclusively for the purposes of the business is allowed as a deduction for computing taxable business income. Finance Act, 2014 made an amendment in section 37 of the Income Tax Act, from the financial year 2014-15 disallowing any expenditure incurred by the assessee on the activities relating to CSR referred to in section 135 of the Companies Act, 2013.
11. The Explanatory Notes attached to the Finance Act, 2014 said that the provisions of section 37(1) of the Income-tax Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Income-tax Act, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditures cannot be allowed under the provisions of section 37 of the Income-tax Act. Therefore, in order to provide certainty on this issue, section 37 has been amended to clarify that for the purposes of sub-section (1) of section 37 any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under said section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Income-tax Act shall be allowed as deduction under those sections subject to fulfilment of conditions, if any, specified therein.
12. CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business. As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for computing the taxable income of the company. Moreover, if CSR expenses are allowed as tax deduction, this would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure.

Reserve Bank of India

13. The Reserve Bank of India (RBI) vide its circular no. RBI/2007-08/216 dated December 12, 2007 had asked the banks to pay special attention towards integration of social and environmental concerns in their business operations. Stressing the need for CSR, RBI points out that these initiatives by the banks are vital for sustainable development.
14. RBI further states, "Issues such as global warming and climate change pose a great risk to the environment and can be quite damaging to the business models of companies. Asian companies are at present underestimating the impact of these calamities and a sense of urgency towards playing a meaningful role in tackling them. Only a scenario in which the quality of environment and social systems synergize with business models, can lead to sustainable development. Many of the newly formed private and foreign banks are aware of the importance of such a step and therefore are having an active corporate social responsibility department."
15. RBI had also asked the banks to start non-financial reporting, which will be used to audit their initiatives towards CSR. Such a reporting will cover the work done by the banks towards the social, economic and environmental betterment of society.

Department of Public Enterprises

16. Prior to the Companies Act, 2013, Department of Public Enterprises [DPE] had issued CSR guidelines in April, 2010 that were revised in April 2013. The new guidelines, which replaced two existing separate guidelines on CSR and sustainable development issued in 2010 and 2011 respectively, mentions the following:

"Since corporate social responsibility and sustainability are so closely entwined, it can be said that CSR and sustainability is a company's commitment to its stakeholders to conduct business in an economically, socially and environmentally sustainable manner that is transparent and ethical."

17. As mentioned above, Government Companies [CPSUs] were required to undertake certain CSR activities. Post implementation of Companies Act 2013, DPE has issued fresh guidelines on October 21, 2014 where it is mentioned that all CPSEs shall have to comply with the provisions of the Act and the CSR Rules. Any amendment notified by the Ministry of Corporate Affairs in the CSR Rules, or in Schedule VII of the Act will also be binding on the CPSEs.

Measurement of CSR Costs

18. CSR expense can be incurred by a company under different scenarios. Accordingly, their principles of measurement are explained below:

- (a) Revenue expenditure by way of supply of goods manufactured or services provided by the company – actual cost of goods produced or services provided, including excise duty, service tax, cess, VAT or other applicable taxes paid.
- (b) Revenue expenditure by way of services provided by the employees of the company – actual cost of such employees, including direct expenses and proportionate share of overheads, if any.
- (c) Revenue expenditure by way of extending economic benefits to the community at large – actual amount of expense made and charged to the statement of profit and loss.
- (d) Revenue expenditure by way of direct contributions to the 'funds' specified in Schedule VII to the Act or incurred through a registered trust or a registered society or a company established under section 8 of the Act (or section 25 of the Companies Act, 1956) by the company, either singly or along with its holding or subsidiary or associate company or along with any other company or holding or subsidiary or associate company of such other company, or otherwise – actual amount of such contribution made or amount incurred or shared and treated as an expense for the year and charged to the statement of profit and loss.
- (e) Where a company receives any grant from others for carrying out CSR activities, the CSR expenditure shall be measured net of the grant received.
- (f) Capital expenditure is incurred to creating CSR assets. Economic benefits from those assets irrespective of whether they are owned & operated by the company or transferred to a third party, shall not accrue to the company. In this regard, Rule 6(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 says that the CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company. Hence, no asset is recognised from such capital expenditure. Therefore, the capital expenditure is charged as an expense in the statement of profit and loss.

Recognition of CSR Costs in Cost Statements

19. CSR expense is an expense not related to the business; it does not have any direct impact on cost of production/operations. Even the assets created out of CSR expenditure are not recognised as 'asset' in the company's books but charged as an expense to the statement of profit and loss. All CSR expenses are incurred in activities that are in the nature of philanthropic activities whose present or future economic benefits do not flow to the company or any surplus/profits arising from such activities cannot be recognised as business profits of the company. Hence, CSR expenses are not included in the cost of sales. They are presented in the Profit

Reconciliation Statement. Similarly, any incomes generated or surplus arising from CSR activities shall not be so recognised and to be exhibited in the Profit Reconciliation Statement. These views are supplemented by the following legislative provisions.

20. Relevant extracts of the Companies (Corporate Social Responsibility Policy) Rules, 2014 are:

- (a) Rule 4(1): The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects, programs or activities (either new or existing), excluding activities undertaken in pursuance of its normal course of business.
- (b) Rule 4(4): the CSR projects or programs or activities undertaken in India only shall amount to CSR expenditure.
- (c) Rule 4(5): The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act.
- (d) Rule 4(7): Contributions of any amount directly or indirectly to any political party under section 182 of the Act shall not be considered as CSR activity.
- (e) Proviso below Rule 6(1) (b): Provided that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company.
- (f) Rule 6(2): The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.
- (g) Rule 7: CSR expendituredoes not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

21. The Explanatory Notes attached to the Finance Act, 2014 said that as the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditures cannot be allowed under the provisions of section 37 of the Income-tax Act.

22. Considering the aforesaid provisions contained in the Companies (Corporate Social Responsibility Policy) Rules, 2014 and also in the Income Tax Act, 1961, it is clear that the expenses incurred on CSR activities are not in the nature of expenses incurred on normal course of business. Further, the income generated from such activities shall not form part of the business profit of the company.

23. Therefore, both the expenditure incurred on CSR activities and also any income generated from such activities shall be treated as non-cost items in the cost

statements of the company. Hence it will be reflected in the reconciliation statement either as a separate line item or included in the non-cost incomes/expenses.

24. In some cases, a company may supply goods manufactured by it or render services as CSR activities. In such cases, the expenditure incurred should be recognised when the control on the goods manufactured by it is transferred or the allowable services are rendered by the employees. The actual cost of such goods or services including applicable taxes, if paid, shall be treated as CSR costs and treated as explained in the preceding paragraphs.
25. If the CSR expenditure is made through a registered trust or a registered society or a company established under section 8 of the Act (or section 25 of the Companies Act, 1956) by the company, either singly or along with its holding or subsidiary or associate company or along with any other company or holding or subsidiary or associate company of such other company, or otherwise, the same would still be treated as non-cost and reflected in the reconciliation statement.
26. In case the expenditure incurred by the company is of such nature which may give rise to an 'asset', all incomes generated out of, and future expenses incurred on such, assets created under CSR projects, programs and activities, whether recognised as revenue in the profit and loss statement or not, shall be treated as non-cost items and reflected separately in the profit reconciliation statement. Similar treatment shall be given in the cost statements of the company, if the control of such 'asset' is transferred to a third party, but the company has still made certain expenses thereon.

Unspent CSR Amount

27. Section 135 (5) of the Companies Act, 2013, requires that the Board of every eligible company, *"shall ensure that the company spends, in every financial year, at least two percent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy"*. A proviso to this Section states that *"if the company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount"*.
28. Further, Rule 8(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, prescribes that the Board's Report of a company covered under these Rules shall include an annual report on CSR, containing particulars specified in the Annexure.
29. The above provisions of the rules clearly lay down that details relating to the CSR activities, including details of any unspent balance, are to be disclosed only in the Board's Report in accordance with the Rules made thereunder. Since the

incomes/expenses relating to CSR activities are considered as non-cost items, any unspent amount need not be reflected in the cost statements.

Amount spent for CSR in excess of 2%

30. Section 135(5) of the companies act 2013 states "*The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, **at least two per cent** of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.*"

31. Where a company spends more than that required under law, a question arises as to whether the excess amount 'spent' can be considered as 'cost'. Since the amount spent, including amount in excess of 2%, is incurred on CSR activities; the entire amount is to be shown as non-cost item in the cost statements.

Wrongful claim of an income or expenses relating to CSR activities

32. As per Companies (Corporate Social Responsibility Policy) Rules, 2014, "Corporate Social Responsibility (CSR)" means and includes but is not limited to projects or programs relating to activities specified in Schedule VII to the Act, or projects or programs relating to activities undertaken by the board of directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.

33. Further, proviso below rule 6(1)(b) states that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company.

34. Therefore, if a company incurs any expenditure or earns any income that relates to the activities undertaken in pursuance of normal course of business of a company or do not relate to the projects or programs relating to activities specified in Schedule VII to the Act, or projects or programs relating to activities undertaken by the board of directors of the company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR policy of the company, then such expenses or incomes shall be recognised in cost statements in accordance with the cost accounting standards issued by the Institute.

35. Similarly, all such expenses incurred by the companies either in pursuance to the government directives or in compliance with any other law or regulation that do not relate to the projects or programs relating to activities specified in Schedule VII to the Act, shall be recognised either as part of the project/program cost or presented in the cost statements in accordance with the cost accounting standards issued by the Institute.

CSR expenses wrongfully claimed as product/service costs and not shown separately as CSR

36. If a company falls under the category specified under section 135(1) of the Act, and incurs any expenditure or earns any income that clearly relate to the projects or programs relating to activities specified in Schedule VII to the Act, or projects or programs relating to activities undertaken by the Board of Directors of the company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR policy of the company, then such expenses or incomes shall be re-classified and recognised as non-cost items and reflected in the profit reconciliation statement.
37. The cost auditor has to be extra careful in such situations and check such expenses [or incomes] to ensure their proper treatment in the cost statements. The cost auditor should also bring such deviations to the notice of the Audit Committee or Board, as the case may be.
38. If a company does not falls under the category specified under section 135(1) of the Act, but incurs any expenditure or earns any income that clearly relate to the projects or programs relating to activities specified in Schedule VII to the Act, or projects or programs relating to activities undertaken by the Board of Directors of the company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR policy of the company, then such expenses or incomes shall be recognised as non-cost items as per the declared CSR policy of the company and reflected in the profit reconciliation statement.

Income/Surplus earned from CSR Projects/Programs

39. The legislative provisions as given under Rule 6(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 states that *“the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.”* Thus any income generated or surplus arising from CSR activities shall be adjusted against the CSR expenses incurred by the business and the net amount should be calculated which will in turn be treated non-cost and form part of the reconciliation statement.

Capital expenditure on CSR related activities

40. Paragraph 7 of the CSR Rules explains CSR expenditure in an inclusive manner. It states as below:

“CSR expenditure shall include all expenditure including contribution to corpus, or on projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on an

item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.”

41. In case of any capital expenditure incurred in creating CSR assets, whether owned & operated by the company or transferred to a third party, the future economic benefits of such assets shall not accrue to the company. In this regard, Rule 6(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 says that the CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company. Hence, all such capital expenditure cannot be recognised as 'asset' in the company's books and is therefore, required to be charged as an expense to the statement of profit and loss. Accordingly, all such expenses shall be treated as non-cost and form part of the reconciliation statement.

Presentation and Disclosure of CSR expenses in Cost Statements

42. The presentation and disclosure of incomes and expenses relating to the CSR projects, programs and activities, in the cost statements shall be made as indicated below:
- (a) All expenses relating to the CSR projects, programs and activities, whether incurred upto the statutory limit of two percent of the average net profits of the company made during the three immediately preceding financial years or more, shall be treated as non-cost items and reflected separately in the profit reconciliation statement.
 - (b) Similarly, all incomes generated out of assets created under CSR projects, programs and activities, whether recognised as revenue in the profit and loss statement or not, shall be treated as non-cost items and reflected separately in the profit reconciliation statement.
 - (c) Any such incomes generated or expenses incurred relating to CSR projects, programs and activities, by an entity not covered under section 135 of the Act, shall be treated as non-cost items and reflected separately in the profit reconciliation statement, if such incomes or expenses have been so classified in the books of account.
 - (d) Details of all such transactions relating to CSR projects, programs and activities, if held with the related parties shall be so disclosed in the statement relating to related party transactions. [for example, contribution to a trust controlled by the company in relation to CSR expenditure]

APPENDICES

Appendix 1

Section 135 of Companies Act, 2013 - Corporate Social Responsibility

(1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

(2) The Board's report under sub-section (3) of Section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,—

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its

report made under clause (o) of sub-section (3) of Section 134, specify the reasons for not spending the amount.

**Schedule VII to the Companies Act, 2013
(See sections 135)**

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:—

- (i) eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation¹ including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water;
- (ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects;
- (iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- (iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water² including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga;
- (v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
- (vi) measures for the benefit of armed forces veteran, war widows and their dependents;
- (vii) training to promote rural sports nationally recognised sports, Paralympic sports and Olympic sports;
- (viii) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;

¹Inserted vide Notification G.S.R. 741 (E) dated 24.10.2014

²Inserted vide Notification G.S.R. 741 (E) dated 24.10.2014

(ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;

(x) rural development projects;

(xi) slum area development³

Explanation.—For the purposes of this item, the term ‘slum area’ shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.

³Inserted vide Notification G.S.R 568 (E) dated 06.08.2014

General Circular No. 21/2014

No. 05/01/2014- CSR
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing,
Shastri Bhawan, Dr. R. P. Marg
New Delhi - 110 001
Dated: 18th June, 2014

To,

All Regional Director,
All Registrar of Companies,
All Stakeholders

Subject: - Clarifications with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013.

Sir,

This Ministry has received several references and representation from stakeholders seeking clarifications on the provisions under Section 135 of the Companies Act, 2013 (herein after referred as 'the Act') and the Companies (Corporate Social Responsibility Policy) Rules, 2014, as well as activities to be undertaken as per Schedule VII of the Companies Act, 2013. Clarifications with respect to representations received in the Ministry on Corporate Social Responsibility (herein after referred as ('CSR')) are as under:-

(i) The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as illustratively mentioned in the Annexure.

(ii) It is further clarified that CSR activities should be undertaken by the companies in project/ programme mode [as referred in Rule 4 (1) of Companies CSR Rules, 2014]. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.

(iii) Expenses incurred by companies for the fulfilment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure

under the Companies Act.

(iv) Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.

(v) "Any financial year" referred under Sub-Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'.

(vi) Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.

(vii) 'Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory.

(viii) Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

2. This issues with the approval of Competent Authority.

Yours faithfully,

Sd/-

(SeemaRath)

Assistant Director (CSR)

Phone No. 23389622

Copy to:

1. PSO to Secretary
2. PPS to Additional Secretary
3. PS to DG (IICA)/JS (M) /JS(B)/JS(SP)/DII (UCN)/EA/DII(POLICY)
4. DIR (AK)/DIR (AB)/DIR(NC)/DIR(PS)
5. e-Governance Cell for uploading on website of MCA

ANNEXURE REFERRED TO AT PARA (i) OF GENERAL CIRCULAR NO. 21/2014 DATED 18.06.2014

Sno.	Additional items requested to be included in Schedule VII or to be clarified as already being covered under Schedule VII of the Act	Whether covered under Schedule VII of the Act
1	<p>Promotion of Road Safety through CSR:</p> <p>(i) (a) Promotions of Education, "Educating the Masses and Promotion of Road Safety awareness in all facets of road usage,</p> <p>(b) Drivers' training,</p> <p>(c) Training to enforcement personnel,</p> <p>(d) Safety traffic engineering and awareness through print, audio and visual media" should be included.</p> <p>(ii) Social Business Projects:</p> <p>"giving medical and Legal aid, treatment to road accident victims" should be included.</p>	<p>(a) Schedule VII (ii) under "promoting education".</p> <p>(b) For drivers training etc. Schedule VII (ii) under "vocational skills".</p> <p>(c) It is establishment functions of Government (cannot be covered).</p> <p>(d) Schedule VII (ii) under "promoting education".</p> <p>(ii) Schedule VII (i) under 'promoting health care including preventive health care</p>
2	<p>Provisions for aids and appliances to the differently-able persons- 'Request for inclusion</p>	<p>Schedule VII (i) under 'promoting health care including preventive health care.'</p>
3	<p>The company contemplates of setting up ARTIIC (Applied Research Training and Innovation Centre) at Nasik. Centre will cover the following aspects as CSR initiatives for the benefit of the predominately rural farming community:</p> <p>(a) Capacity building for farmers covering best sustainable farm management practices.</p> <p>(b) Training Agriculture Labour on skill development.</p> <p>(c) Doing our own research on the field for individual crops to find out the most cost optimum and Agri-ecological sustainable farm practices. (Applied research) with a focus on water management.</p> <p>(d) To do Product Life Cycle analysis from the soil conservation point of view.</p>	<p>Item no. (ii) of Schedule VII under the head of "promoting education" and "vocational skills" and "rural development".</p> <p>(a) "Vocational skill" livelihood enhancement projects.</p> <p>(b) "Vocational skill"</p> <p>(c) 'Ecological balance', 'maintaining quality of soil, air and water'.</p> <p>(d) "Conservation of natural resource" and 'maintaining quality of soil, air and water'.</p>

4	<p>To make "Consumer Protection Services" eligible under CSR. (Reference received by Dr. V.G. Patel, Chairman of Consumer Education and Research Centre).</p> <p>(i) Providing effective consumer grievance redressal mechanism.</p> <p>(ii) Protecting consumer's health and safety, sustainable consumption, consumer service, support and complaint resolution.</p> <p>(iii) Consumer protection activities.</p> <p>(iv) Consumer Rights to be mandated.</p> <p>(v) all consumer protection programs and activities" on the same lines as Rural Development, Education etc.</p>	<p>Consumer education and awareness can be covered under Schedule VII (ii) "promoting education".</p>
5	<p>(a) Donations to IIM [A] for conservation of buildings and renovation of classrooms would qualify as "promoting education" and hence eligible for compliance of companies with Corporate Social Responsibility.</p> <p>(b) Donations to IIMA for conservation of buildings and renovation of classrooms would qualify as "protection of national heritage, art and culture, including restoration of buildings and sites of historical importance" and hence eligible for compliance of companies with CSR.</p>	<p>Conservation and renovation of school buildings and classrooms relates to CSR activities under Schedule VII as "promoting education".</p>
6	<p>Non Academic Techno park TBI not located within an academic Institution but approved and supported by Department of Science and Technology.</p>	<p>Schedule VII (ii) under "promoting education", if approved by Department of Science and Technology.</p>
7	<p>Disaster Relief</p>	<p>Disaster relief can cover wide range of activities that can be appropriately shown under various items listed in Schedule VII. For example,</p> <p>(i) medical aid can be covered under 'promoting health care including preventive health care.'</p> <p>(ii) food supply can be covered under eradicating hunger, poverty and malnutrition.</p> <p>(iii) supply of clean water can be covered under 'sanitation and making</p>

		available safe drinking water'.
8	Trauma care around highways in case of road accidents.	Under 'health care'.
9	Clarity on "rural development projects"	Any project meant for the development of rural India will be covered under this.
10	Supplementing of Govt. Schemes like mid-day meal by corporates through additional nutrition would qualify under Schedule VII.	Yes. Under Schedule VII, item no. (i) under 'poverty and malnutrition'.
11	Research and Studies in the areas specified in Schedule VII.	Yes, under the respective areas of items defined in Schedule VII. Otherwise under 'promoting education'.
12	Capacity building of government officials and elected representatives - both in the area of PPPs and urban infrastructure	No.
13.	Sustainable urban development and urban public transport systems	Not covered.
14	Enabling access to, or improving the delivery of, public health systems be considered under the head "preventive healthcare" or "measures for reducing inequalities faced by socially & economically backward groups"?	Can be covered under both the heads of "healthcare" or "measures for reducing inequalities faced by socially & economically backward groups", depending on the context.
15	Likewise, could slum redevelopment or EWS housing be covered under "measures for reducing inequalities faced by socially & economically backward groups"?	Yes.
16	Renewable energy projects	Under 'Environmental sustainability, ecological balance and conservation of natural resources',

17	<p>(i) Are the initiatives mentioned in Schedule VII exhaustive?</p> <p>(ii) In case a company wants to undertake initiatives for the beneficiaries mentioned in Schedule VII, but the activity is not included in Schedule VII, then will it count (as per 2(c)(ii) of the Final Rules, they will count)?</p>	<p>(i) & (ii) Schedule VII is to be liberally interpreted so as to capture the essence of subjects enumerated in the schedule.</p>
18	<p>US-India Physicians Exchange Program-broadly speaking, this would be program that provides for the professional exchange of physicians between India and the United States.</p>	<p>No.</p>

Appendix -4

General Circular No. 36/2014

F.No.05/01/2014-CSR
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing
Shastri Bhawan, Dr. R.P. Road,
New Delhi-110001
Dated: 17.09.2014

To

All Regional Director,
All Registrar of Companies,
All Stakeholders

**Subject: Clarification with regard to provisions of Corporate Social Responsibility (CSR)
under section 135 of the Companies Act, 2013.**

Sir,

In continuation of the General Circular No. 21 of 2014 dated 18.06.2014, the following clarifications are hereby issued:

(i) Rule 4(6) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as notified on 27.02.2014 has been amended by notification dated 12.09.2014; and

(ii) Consequently, clarification (iv) in General Circular No. 21 of 2014 dated 18.06.2014, stands omitted.

2. This issues with the approval of Competent Authority.

Yours faithfully,

Sd/-

(Seema—Rath)

Assistant Director (CSR)

Tel: 011-23384657

Copy to:

1. PSO to Secretary
2. PPS to Additional Secretary
3. PS to DG(IICA)
4. PS to JS(M)/JS(B)/JS(ADM)/JS(SP)/DII (NS)/EA/DII (Policy)
5. DIR (AK)/ DIR (NC)/ DIR(PS)/DIR (R&A)
6. e-Governance Cell for uploading on website of MCA
7. Guard File.

Appendix-5

FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT

1. A brief outline of the company's CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.

2. The Composition of the CSR Committee.

3. Average net profit of the company for last three financial years.

4. Prescribed CSR Expenditure (two per cent. Of the amount as in item 3 above)

5. Details of CSR spent during the financial year.

(a) Total amount to be spent for the financial year;

(b) Amount unspent, if any;

(c) Manner in which the amount spent during the financial year is detailed below.

1	2	3	4	5	6	7	8
Sno.	CSR Project or activity identified	Sector in which the Project is covered	Projects or programs (1) Local area or other (2) Specify the State and district where projects or programs was undertaken	Amount outlay (budget) project or programs wise	Amount spent on the projects or programs Sub -heads: (1) Direct expenditure on projects or programs. (2) Overheads:	Cumulative expenditure up to the reporting period	Amount spent: Direct or through implementing agency
1							
2							
3							
	Total						

**Give details of implementing agency*

6. In case the company has failed to spend the two per cent of the average net profit of

the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.

7. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

Sd/- (Chief Executive Officer or Managing Director or Director)	Sd/- (Chairman CSR Committee)	Sd/- (Person specified under clause (d) of sub-section (1) of section 380 of the Act)(wherever applicable)
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